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## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

#### **49 CFR Chapter I**

**[Docket No. PHMSA-2013-0027; Notice No. 13-5]**

### **Regulatory Flexibility Act Review**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of regulatory review; request for comments.

**SUMMARY:** PHMSA seeks comments on the economic impacts of its Hazardous Materials Regulations on small entities. In accordance with section 610 of the Regulatory Flexibility Act and as published in the Unified Agenda and Regulatory Plan, PHMSA is reviewing and analyzing the regulations applicable to the Hazardous Materials Program Procedures to identify requirements which may have a significant impact on a substantial number of small entities. The Unified Agenda and Regulatory plan for the Department of Transportation can be found at the following URL: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-15/pdf/2013-00597.pdf>.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ben Supko, Office of Hazardous Materials Safety, Standards and Rulemaking Division (202) 366-8553, 1200 New Jersey Avenue SE., Washington, DC 20590. For more information on the Hazardous Materials Regulations contact

the Hazardous Materials Information Center at 1-800-467-4922 (in Washington, DC, call 202-366-4488).

**SUPPLEMENTARY INFORMATION:** The complete analysis of the rules in the 2012-2013 Review Year, the Unified Agenda and Regulatory Plan, and comment submission can be found at: <http://www.regulations.gov/> (Docket No. PHMSA-2013-0027).

## **I. Section 610 of the Regulatory Flexibility Act**

### *A. Background and Purpose*

Section 610 of the Regulatory Flexibility Act requires periodic reviews of existing regulations with significant economic impact (5 U.S.C. § 610(c)). The purpose of the 610 reviews is to assess the following: (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

### *B. Review Schedule*

The Department of Transportation (DOT) published its Unified Agenda and Regulatory Plan on December 21, 2012 listing in Appendix D - Review Plans for Section 610 and Other Requirements (78 FR 3299) those regulations that each operating administration will review under section 610 during the next 12 months. Appendix D also contains DOT's 10-year review plan for all its existing regulations.

PHMSA has divided its Hazardous Materials Regulations (HMR; 49 CFR parts 100-185) into 10 groups by subject area. Each group will be reviewed once every 10 years. Each group of regulations is reviewed in a two-stage process: (1) Analysis Year; and (2) Section 610 Review Year. In the Analysis Year, PHMSA conducts a review of the group regulations to determine whether any rule has a significant impact on a substantial number of small entities; and thus requires review in accordance with section 610 of the Regulatory Flexibility Act. In each Regulatory Agenda, PHMSA publishes the results of the analyses completed for the previous year. For those rules that may have negative findings, a brief rationale is provided. For parts, subparts or sections of the HMR that do have a significant impact on a substantial number of small entities, PHMSA will announce that it will be conducting a formal section 610 review during the following year. For the purposes of this review, the 2012-2013 610 review year began in the Fall of 2012 and PHMSA's analysis will conclude in the Fall of 2013. The following table shows the 10-year analysis and review schedule:

#### PHMSA SECTION 610 REVIEW PLAN 2008-2018

Title	Year	Regulations To Be Reviewed	Analysis Year	Review Year
Specifications for Non-bulk Packagings	1	part 178	2008	2009
Specifications for Bulk Packagings	2	parts 178 through 180	2009	2010
Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans; and Carriage by aircraft	3	parts 172 and 175	2010	2011
Incident Reporting	4	sections 171.15 and 171.16	2011	2012

Hazardous Materials Program Procedures; General Information, Regulations and Definitions; Pipeline Safety Programs and Rulemaking Procedures; and Transportation of Hazardous Liquids by Pipeline	5	parts 106, 107, 171, 190, and 195	2012	2013
Carriage by Rail; Carriage by Highway; Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Conditions Reports	6	parts 174, 177, 191, and 192	2013	2014
Carriage by Vessel; and Drug and Alcohol Testing	7	parts 176 and 199	2014	2015
-	8	parts 172 through 178	2015	2016
-	9	parts 172, 173, 174, 176, 177, and 193	2016	2017
-	10	parts 173 and 194	2017	2018

*C. 2012-2013 610 review year: Sections Under Review*

During Year 5 (2012-2013), PHMSA has initiated and will continue to conduct a formal section 610 review of some of 49 CFR Parts 106, 107, 171. The full analysis document for the hazardous materials rules covered by Year 5 is available in the public docket for this notice (Go to [www.regulations.gov](http://www.regulations.gov) – Search for Docket No. PHMSA-2013-0027). The section 610 analysis that began in the fall of 2012 included 49 CFR parts 106, 107, 171. Specific areas outlined in the full analysis for further review include:

PART 107

Subpart	Title
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<p>Subpart D.....</p> <p>Subpart D of part 107 contains the regulations pertaining to the enforcement authorities of the Associate Administrator for Hazardous Materials Safety and the Office of Chief Counsel. It outlines the minimum, maximum, and recommended baseline penalties for violating the HMR and the procedures for enforcing and imposing those sanctions. While no additional costs or impacts are imposed on small entities who comply with the HMR, PHMSA seeks comment on these regulations due to the potential for explicit monetary expenses (e.g. civil penalties and ticketing).</p>	<p>Enforcement</p>
<p>Subpart F.....</p> <p>Subpart F of part 107 contains the registration procedures for manufacturers, assemblers, repairers, inspectors, testers and design certifying engineers of cargo tanks manufactured in accordance with a DOT</p>	<p>Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers</p>

<p>specification or DOT special permit. In the last regulatory evaluation conducted in 2003, it was determined that approximately 9,200 motor carriers and 7,000 cargo tank inspection/testing facilities are small entities affected by the costs associated with these procedures. PHMSA is seeking comment on whether these regulations have a significant impact on small entities.</p>	
<p>Subpart I.....</p> <p>Subpart I of part 107 prescribes the approval process for persons who seek to be an independent inspection agency to perform tests, inspections, verifications and certifications of DOT specification cylinders or UN pressure receptacles. Additionally, this subpart addresses the approval process for a person who engages in the requalification (e.g. inspection, testing, or certification), rebuilding, or repair of a cylinder manufactured in accordance with a DOT specification or a pressure receptacle in accordance with a UN</p>	<p>Approval of Independent Inspection Agencies, Cylinder Requalifiers, and Non-domestic Chemical Analyses and Tests of DOT Specification Cylinders</p>

<p>standard, or under the terms of a DOT special permit. This approval is commonly known as a requalifier identification number (RIN).</p> <p>Lastly, subpart I of part 107 addresses the approval procedures for persons who perform the manufacturing chemical analyses and tests of DOT specification cylinders, special permit cylinders, or UN pressure receptacles outside the United States. In the regulatory analysis of previous rulemakings affecting subpart I of part 107, it was determined that the vast majority of entities subject to those rulemakings were small entities. Thus, due to the number of small entities this subpart is estimated to affect, PHMSA is seeking comment on whether these regulations have a significant impact.</p>	
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As discussed in the Background and Purpose section above, Section 610 of the Regulatory Flexibility Act requires periodic reviews of existing regulations with significant economic impact (5 U.S.C. § 610(c)). In conducting this review, PHMSA is seeking specific

comments on whether the Hazardous Materials Program Procedures in 49 CFR Part 107, Subparts D, F and I have a significant impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

If your business or organization is a small entity, or you represent a business or organization that is a small entity and the rules in 49 CFR Part 107, Subparts D, F, and I or 49 CFR Parts 106, 107, 171 have a significant economic impact on your business or organization, please submit a comment at: <http://www.regulations.gov/> (Docket No. PHMSA-2013-0027) explaining the following:

1. How and to what degree these rules affect you;
2. Any complaints or comments you may have concerning the covered rules;
3. The complexity of the covered rules;
4. The extent to which the rules overlap, duplicate or conflict with other Federal rules, and to the extent feasible, with State and local government rules; and
5. The extent of the economic impact on you and why you believe the economic impact is significant.

Issued in Washington, DC on April 30, 2013 under authority delegated in 49 CFR Part 106.

Magdy El-Sibaie  
Associate Administrator for Hazardous Materials Safety  
Pipeline and Hazardous Materials Safety Administration



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